

AMENDED IN SENATE JULY 16, 2009

AMENDED IN SENATE JUNE 29, 2009

AMENDED IN ASSEMBLY APRIL 20, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1516

Introduced by Assembly Member Lieu

February 27, 2009

An act to amend Section 1054.3 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL’S DIGEST

AB 1516, as amended, Lieu. Criminal procedure: discovery.

Existing law provides that no discovery shall occur in criminal cases except as provided by statute or as mandated by the Constitution of the United States. Under existing law, a defendant and his or her attorney are required to disclose to the prosecuting attorney any reports or statements of experts made in connection with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the defendant intends to offer in evidence at the trial.

This bill would ~~require~~ *allow* the court to order a defendant in a criminal action or a minor in a juvenile delinquency proceeding to submit to examination by a prosecution-retained mental health expert whenever a defendant or minor, as specified, places in issue his or her mental state at any phase of the criminal action or juvenile proceeding through the proposed testimony of any mental health expert. The bill would require the prosecuting attorney to submit a list of the tests he or she proposes to have a prosecution-retained expert conduct on the

defendant or minor and would require the court, upon the request of the defendant or minor, to hold a hearing to consider any objections to the proposed tests. The bill would require the court to make a threshold determination *before ordering the defendant to submit to the examination* that the proposed tests bear some reasonable relation to the mental state placed in issue by the defendant or minor. The bill would specify that its purpose is to respond to Verdin v. Superior Court (2008) 43 Cal.4th 1096, as specified.

This bill would amend Proposition 115, an initiative statute adopted by the voters at the June 5, 1990, statewide primary election, which provides that its provisions may be amended by the Legislature by a $\frac{2}{3}$ vote of the membership of each house.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1054.3 of the Penal Code is amended to
2 read:
3 1054.3. (a) The defendant and his or her attorney shall disclose
4 to the prosecuting attorney:
5 (1) The names and addresses of persons, other than the
6 defendant, he or she intends to call as witnesses at trial, together
7 with any relevant written or recorded statements of those persons,
8 or reports of the statements of those persons, including any reports
9 or statements of experts made in connection with the case, and
10 including the results of physical or mental examinations, scientific
11 tests, experiments, or comparisons which the defendant intends to
12 offer in evidence at the trial.
13 (2) Any real evidence which the defendant intends to offer in
14 evidence at the trial.
15 (b) (1) Unless otherwise specifically addressed by an existing
16 provision of law, whenever a defendant in a criminal action or a
17 minor in a juvenile proceeding brought pursuant to a petition
18 alleging the juvenile to be within Section 602 of the Welfare and
19 Institutions Code places in issue his or her mental state at any
20 phase of the criminal action or juvenile proceeding through the
21 proposed testimony of any mental health expert, upon timely
22 request by the prosecution, the court ~~shall~~ may order that the

1 defendant or juvenile submit to examination by a
2 prosecution-retained mental health expert.

3 (A) The prosecution shall bear the cost of any such mental health
4 expert's fees for examination and testimony at a criminal trial or
5 juvenile court proceeding.

6 (B) The prosecuting attorney shall submit a list of tests proposed
7 to be administered by the prosecution expert to the defendant in a
8 criminal action or a minor in a juvenile proceeding. At the request
9 of the defendant in a criminal action or a minor in a juvenile
10 proceeding, a hearing shall be held to consider any objections
11 raised to the proposed tests before any test is administered. ~~The~~
12 ~~trial court shall~~ *Before ordering that the defendant submit to the*
13 *examination, the trial court must* make a threshold determination
14 that the proposed tests bear some reasonable relation to the mental
15 state placed in issue by the defendant in a criminal action or a
16 minor in a juvenile proceeding. For the purposes of this
17 subdivision, the term "tests" shall include any and all assessment
18 techniques such as a clinical interview or a mental status
19 examination.

20 (2) The purpose of this subdivision is to respond to Verdin v.
21 Superior Court 43 Cal.4th 1096, which held that only the
22 Legislature may authorize a court to order the appointment of a
23 prosecution mental health expert when a defendant has placed his
24 or her mental state at issue in a criminal case or juvenile proceeding
25 pursuant to Section 602 of the Welfare and Institutions Code. Other
26 ~~than requiring~~ *authorizing* the court to order testing by
27 prosecution-retained mental health experts in response to Verdin
28 v. Superior Court, supra, it is not the intent of the Legislature to
29 disturb, in any way, the remaining body of case law governing the
30 procedural or substantive law that controls the administration of
31 these tests or the admission of the results of these tests into
32 evidence.